Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re:	)	
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RETENTION BY BROADCASTERS OF PROGRAM RECORDINGS	)	MB DOCKET NO. 04-232
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	)	

To: The Commission

COMMENTS OF CRAWFORD BROADCASTING COMPANY

Crawford Broadcasting Company ("Crawford") by its attorney, hereby opposes the Commission's above-captioned Notice of Proposed Rulemaking ("NPRM") FCC 04-145, released July 7, 2004, concerning whether broadcasters should retain certain program recordings. In support thereof, the following is shown.

Crawford, by and through its affiliated companies or predecessors in interest, has been involved in broadcast programming since 1932, and acquired its first broadcast license in 1949. Currently, it holds broadcast licenses for 19 AM and 11 FM radio stations, serving 11 separate geographic areas, including rural and urban markets. It has never received an indecent programming complaint.

The NPRM posits that requiring broadcasters to retain recordings of their broadcasts for a period of time could "improve the complaint process" and allow the Commission to better enforce existing indecency standards. As with all regulation, the Commission first determines whether the proposed new mandate is rationally required in the public interest for the Commission to carry out its regulatory function. It also determines whether the proposed administrative burden exceeds the intended benefit.

Crawford shows herein that the record does not reflect any

reasonable need or justification for the proposed regulation, and the costs of implementing the proposal far outweigh the meager enforcement gain anticipated by the rule.

I. Broadcast Stations are largely compliant with the indecency rules, therefore, additional enforcement tools not reasonably justified.

The United States' population is over 250 million people.[1] As of March 31, 2004, there were 15,830 full powered broadcast stations serving this population,[2] and the vast majority of these stations offer programming 24 hours per day. The US populace consumes or is directly exposed to varying amounts of radio and/or television broadcasts during any given year; often several hours each day.[3]

It is thus apparent that there are tens of millions of TV and radio broadcast hours and programs available to hundreds of millions of people each year. However, for the period between 2000 and 2002, the Commission received 14,379 indecency complaints covering a mere 598 programs.[4] In 2000, the Enforcement Bureau issued or proposed indecency-related fines against ten broadcast stations.[5] Between 2002 and 2003 the number of indecency complaints increased while the number

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[1]http://factfinder.census.gov/home/saff/main.html?_lang=en

[2] 13,476 full power AM, FM and educational radio stations and 2,354 full power UHF, VHF and Class A television stations. http://www.fcc.gov/mb/audio/totals/bt040331.html

[3]For example, recent estimates average more than 2 hours of television viewing per person each day.

[4]See, March 2, 2004, Letter from FCC Chairman Michael Powell to the Hon. John Dingell.

[5]http://www.fcc.gov/eb/reports/yearone.html

of programs complained about declined from 389 programs to 375.[6]

With such a staggeringly large number of programming and viewing opportunities available to the public, the resulting number of programs which were complained about represent an astoundingly small percentage thereof, numbering in the single digits. Clearly, the vast majority of broadcasters comply with the Commission's prohibitions on indecent programming.

The NPRM shows no basis to determine that the majority of broadcasters are scofflaws in this area or that the Commission's indecency enforcement mechanism is deficient or would be improved significantly by the manner proposed requirement.

II. Requiring stations to record and store 16 or more hours of programming per day will not significantly improve the Commission's indecency enforcement program.

Commission Chairman Michael Powell stated in his March 2, 2004, letter to the Hon. John Dingell, that out of the 14,379 indecency complaints submitted to the FCC for the period between 2000 and 2002, the Commission denied or dismissed 169 (a tiny 1.175%!) complaints for the lack of a tape, transcript or significant excerpt. In other words, the Commission processed nearly 99% of its complaints and it achieved this impressive rate <u>without</u> the use of a program retention rule.

This success is not surprising. Opportunity is readily and reasonably available for the public to learn of complaint procedures. The FCC website details the process to file an indecency complaint.

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[6] See, Chairman Michael Powell's published February 11, 2004, testimony before the U.S. Senate Committee on Commerce, Science, and Transportation.

The FCC Call Center is trained to direct consumers to appropriate information on the topic. There is also a discussion about indecency and obscenity in the "The Public and Broadcasting" procedure manual which every full powered broadcast station must maintain in its public inspection file.[7] Moreover, failure to supply a tape or transcript does not automatically result in the dismissal of a complaint. The Commission has the authority and means to process complaints in the absence of a tape or transcript.[8]

Requiring every broadcast station to record and archive programming when there is only a small percentage of cases where such recordings would be necessary will not significantly improve the indecency enforcement success rate.

III. The cost of implementing and administering the recording requirement far outweighs the anticipated benefit.

Making and retaining a recording of all material aired during the hours from 6 a.m. to 10 p.m. for a period of months would present a significant burden on broadcasters' resources. In practical terms, such recordings would have to be done in the digital domain, employing automated software, compression algorithms and magnetic media storage.[9] Hardware would consist of a computer, monitor, audio card and storage array; software and an operating system would also be required. To

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[7]47 CFR §73.3526

[8]See, e.g., Emmis Radio License Corp., FCC 04-62, released April 4, 2004.

[9]Stations not equipped for a digital domain would have additional conversion costs to install such a domain, or their individual costs would be those related to equipment and monitoring necessary for an analog domain which is more labor intensive and would result in generally higher costs than those described in these comments.

store 90 days worth of monaural material using a sample rate of 32 kHz at 10.6:1 compression would require 47 GB of storage. This hardware and software would cost the average broadcast station $2,500 or more.

Additional cost considerations militate against adopting the proposal. The hardware for such a system would occupy a good bit of rack space, which is often very limited. In some cases, installing a recording/archiving system with sufficient capacity to comply with the instant proposal would require purchasing and installing an additional equipment rack, along with electrical, mechanical, and perhaps structural considerations. Such can easily cost $2,000 or more.

PC-based systems are failure prone. Hard drives, which would be at the heart of any digital recording/archiving system, are mechanical devices with fragile and life-limited bearings, heads, motors and magnetic media. It is a question of "when" such equipment will fail, not "if" it will fail, resulting in further repair or replacement costs. In addition, when a hard drive fails, when there is some other hardware problem or when there is a software glitch, many hours of stored material will undoubtedly be lost. Presumably, the Commission's requirement to record and archive all material aired during the specified hours will be absolute. Would the Commission require broadcasters to make such systems "fail-safe" with backups and other safeguards? If so, the cost could easily double or triple.

Perhaps more burdensome than the entry-level hardware and software costs of such a system would be the repetitive ongoing operating and labor costs in terms of oversight and maintenance. A daily check of the system and spot-checks of the recorded material would be required to insure that the recording was being properly made and

stored. System maintenance would have to be performed during the time the system is not being used, between 10 p.m. and 6 a.m., requiring technical personnel to come in during those overnight hours. In many cases, such personnel assess a surcharge for after-hours labor costs.

Summary of first year costs of operation:

At least	$2,500:	initial hardware/software
At least	$2,000:	initial installation and startup
As much as	$2,738:	routine monitoring and maintenance[10]
Total:	$7,238	

15,830 full powered stations x $7,238 = up to $114,561,710, a conservative estimate of aggregate first year costs. Depending on individual needs, these costs could be greater. Using the formula in Footnote 10, the labor costs alone to monitor the system in subsequent years would cost tens of millions of dollars annually, with added costs for equipment repair, replacement and upgrades. Clearly the financial costs for the proposed program retention rule are astronomical in comparison to the anticipated benefit of reviewing the additional 1.175% of indecency complaints which were dismissed for lack of a tape, transcript or significant excerpt. Small market stations and non-commercial educational stations, both of which the Commission has long recognized as having limited revenues, would be particularly hard hit by these fixed costs.

In Contemporary Media, Inc. et al. v. FCC, 214 F.3d 187, 193

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[10]Average of 182.5 hours/year x $15/hour = $2,737.50. Actual cost may be higher as this figure contemplates a conservative ½ hour per day and the $15 estimate does not include FICA (7.65%), workman's comp (1.3% avg.), health and dental insurance contributions (55% of premiums), disability (5% of health/dental premium amount), supervisory or administrative costs, etc.

(D.C. Cir. 2000), the Court recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." This system has served the Commission well. The NPRM provides no basis to abandon this reliance in the area of indecency complaint adjudication.

There are thousands of stations whose programming consists entirely of information or entertainment suitable for all ages. Stations such as KBRT(AM) Avalon, CA, KCBC(AM) Riverbank, CA, and WEEC(FM) Springfield, OH, air a range of evangelical Christian programming. Stations KBOQ(FM) Carmel, California, and WGMS-FM Washington, DC, program primarily classical music and information. None of these stations has been the subject of an indecency complaint, and it is difficult to conceive that they would ever be such with their current format. These exemplary stations, and thousands of others like them, have proven themselves wholly capable of complying with the indecent program regulations.

The Commission must consider whether indecency enforcement will be reasonably served by requiring stations such as KBRT, WGMS-FM, KBOQ and others like them to record and archive 960-1440[11] or more hours of religion, classical music or informational programming on a rolling basis. What public interest benefit is achieved and what valid point is served by requiring such stations to take on the added obligation and expense of recording and archiving programming, when the relevant time and resources could be better directed to serving the public?

Clearly, the anticipated costs of the proposed rule far outstrip

[11]16 hours/day x 60 days = 960 hours. 16 hours/day x 90 days = 1440 hours.

the anticipated benefit.

IV. The proposed rule runs counter to the goals expressed by the government's deregulatory policy.

As Commissioner Martin expressed in his separate statement attached to the Commission's Third Report & Order in Docket 98-146[12] released Feb 2, 2000: government should endeavor to remove burdensome regulations that do not serve compelling purposes. This is not a novel concept; it is a sine qua non of good government. For example, the Commission is obligated to review its regulations every few years with a view toward eliminating those which do not serve an important public interest goal. The Paperwork Reduction Act also requires Federal agencies to carefully evaluate and minimize the burdens created by laws and in MM Docket 04-228 the Commission is reviewing ways to eliminate market barriers for small business entry. The Commission pursued a deregulatory scheme in earnest in the mid to late 1980's when the agency eliminated a number of regulations and policies affecting program content and other aspects of station operation. The deregulation appears to have succeeded as purged rules were not reimplemented.

These deregulatory actions stemmed from the Commission's conclusion that it serves the public interest to eliminate rules when less burdensome and more reasonable enforcement mechanisms exist. For example, requirements such as routine operating and maintenance logs and the ascertainment rule were eliminated because the benefits did

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[12]Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996.

not justify the public or private administrative costs related to the requirements.[13] The NPRM presents no record explaining why a blanket program retention rule which would only be useful in a scintilla of cases is the most reasonable and least burdensome enforcement mechanism.

V. If adopted, any requirement to record and archive programming should be no more burdensome than necessary to achieve its purpose.

Rather than a blunderbus approach to the issue at hand, there is a simpler and less restrictive means to address the less than 2% of indecency complaints which were dismissed for lack of a tape or transcript. Since only a small percentage of programs are the subject of an indecency investigation and less than 2% of those would be served by a copy or transcript of the program, the Commission's goal and the public interest would be better served by targeting stations which broadcast offending material.

In recent years it seems that a significant portion of the Commission's time in the indecency enforcement area is spent reviewing multiple complaints against the same broadcasters. It seems appropriate that only licensees which are unable to police themselves adequately should be subject to further scrutiny and reporting. For the handful of offenders, this could easily be assessed on a case by case basis. For example, in addition to whatever sanction is deemed appropriate, the station could be required to record and archive programming for a period of time. In the same way, the Commission grants short-term license renewal for those stations which do not meet

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[13]See, Revisions of Programming and Commercialization Policies 56 RR 2d 1005 (1984); Operating and Maintenance Logs 54 RR 2d 805 (1983).

the threshold needed for a full-term license renewal. This informs the station that it is under special consideration, but affects only the station in question and not the thousands that have earned a full-term renewal. It will also have a deterrent effect for those desiring to avoid a program recording and retention obligation.

VI. Summary

Experience shows that a program tape or transcript was required by the FCC in less than 2% of the indecency cases adjudicated in the 2000 through 2003 period. If through reasoned decision making the Commission is able to justify that such rate is unacceptable and that the costs of the proposed rule do not exceed the anticipated benefits, it seems far more equitable to impose recording and archiving obligations against a licensee which is the subject of an actual indecency complaint rather than a multi-million dollar blanket obligation against the 1,000s of broadcasters, like Crawford, which have never been and will likely never be the subject of an indecency complaint.

Respectfully Submitted,

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